

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YI SUN,

Plaintiff,

No. 18 Civ. 11002 (LTS)(SN)

-against-

ORDER

NEW YORK CITY POLICE
DEPARTMENT, et al.,

Defendants.

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The Court has received and reviewed in their entirety Plaintiff's "Motion to Add or Amend Findings of Fact" and Plaintiff's "Motion for Extension of Time to File Notice of Appeal . . . and filing cost in Appeal." (Docket Entry Nos. 110, 112.)

Plaintiff's Motion to Add or Amend Findings of fact requests that the Court amend the Aug. 6, 2020, Memorandum Opinion and Order granting in part Defendants' motions to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket Entry No. 108). (Docket Entry No. 112.) However, in the Aug. 6, 2020, Memorandum Opinion and Order, the Court made no findings of fact. Instead, as required upon a motion brought pursuant to Rule 12(b)(6), the Court accepted as true all nonconclusory factual allegations in the complaint and drew all reasonable inferences in Plaintiff's favor. Roth v. Jennings, 489 F.3d 499, 501 (2d Cir. 2007). The Court is not permitted to resolve factual disputes at this stage of the litigation. Accordingly, Plaintiff's Motion to Add or Amend Findings of Fact is denied as there is no legal basis to grant the relief sought.

Plaintiff's Motion for an Extension requests more time to file her Notice of Appeal from the Court's Aug. 6, 2020, Memorandum Opinion and Order, as well as more time to pay the filing fee. (Docket Entry No. 108.) Plaintiff has already filed a Notice of Appeal from that

Memorandum Opinion and Order, see Docket Entry No. 111, therefore her request for an extension of time to do so is denied as moot. Plaintiff's request for an extension of time in which to pay the filing fee is denied, without prejudice to her ability to make an application for such an extension to the Second Circuit.

Plaintiff's also moves for permission to appeal in forma pauperis. (Docket Entry No. 110.) In the Aug. 6, 2020, Memorandum Opinion and Order, the Court certified under 28 U.S.C. § 1915(a)(3) that any appeal from that order would not be taken in good faith, and therefore that in forma pauperis status was denied for the purpose of an appeal. (Docket Entry No. 108, at 29.) Plaintiff's instant motion seeks reconsideration of that determination. A motion for reconsideration is not "a vehicle for relitigating old issues, presenting the case under new theories . . . or otherwise taking a second bite at the apple." Analytical Surveys, Inc. v. Tonga Partners, L.P., 684 F.3d 36, 52 (2d Cir. 2012). Indeed, reconsideration is an "extraordinary remedy to be employed sparingly in the interest of finality and conservation of scarce judicial resources." In re Health Mgmt. Sys. Inc. Sec. Litig., 113 F. Supp. 2d 613, 614 (S.D.N.Y. 2000) (internal quotation marks omitted). To warrant reconsideration, the moving party bears the heavy burden of showing "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent a manifest injustice." Virgin Atlantic Airways, Ltd. v. National Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992) (internal quotation marks omitted).

Plaintiff has identified no legal or factual basis justifying reconsideration of the Court's Aug. 6, 2020, determination that there exists no good faith basis for an appeal from that Memorandum Opinion and Order. Accordingly, Plaintiff's motion for reconsideration is denied.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444 (1962).

This order resolves Docket Entry Numbers 110 and 112.

SO ORDERED.

Dated: New York, New York
September 2, 2020

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

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